IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 18 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA
HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME TAX - Applicant(s)

Versus

P M DIESELS PVT LTD - Respondent(s)

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Appearance :
MR MANISH R BHATT for Applicant(s) : 1,
MR SN SOPARKAR for Respondent(s) : 1,
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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
and
HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 29/11/2005

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE D.A.MEHTA)

1.Income Tax Appellate Tribunal, Ahmedabad Bench “A”, has

referred the following two questions under section 256(1) of the Income Tax Act, 1961 at the instance of the Commissioner of Income Tax:

> "[1] Whether, the appellate tribunal is right in law and on facts in setting aside the order made by the Commissioner of Income Tax whereby he had given direction to the Assessing Officer to decide the question of payment of Rs.2,71,724/- while working out the cases of maximum permissible deduction under the Payment of Bonus Act?
>
> [2] Whether the Appellate Tribunal is right in law and on facts in setting aside the order passed by the Commissioner of Income Tax whereby he had directed the assessing officer to initiate penalty proceedings under section 275(2)(a) of the Act?"

2. The assessment year is 1983-84 and the relevant accounting period is 30th June 1982. It is common ground between the parties that, as both the issues raised stand concluded by decisions of this Court, it is not necessary to set out the facts and contentions in detail.

3. Insofar as question No.1 is concerned, the Tribunal while setting aside the order of Commissioner of Income Tax u/s 263 of the Act, has relied upon its own order in assessee's own case for assessment year 1985-86, wherein the Tribunal had held that productivity linked bonus is an allowable deduction dehors the bonus paid under the provisions of the Payment of Bonus Act. Against the said order of Tribunal for assessment year 1985-86, revenue had come in reference before this Court. In the judgement rendered on 24/11/2005 in Income Tax Reference No.300/1994 between the same parties, this Court has declined to interfere with the order of Tribunal. The reference has accordingly been answered in favour of the assessee.

4. In the circumstances, for the reasons stated in judgement rendered on 24/11/2005 in assessee's own case in Income Tax Reference No.300/1994, question No.1 is answered in the affirmative i.e. in favour of the assessee and against the revenue.

5. In relation to question No.2, it is accepted that the issue stands concluded by judgement rendered by this Court in the case of CIT v. Parmanand M.Patel, [2005]

278 ITR 3. Therefore, applying the ratio laid down by this Court in the aforesaid decision in the case of CIT v. Parmanand M.Patel (supra), question No.2 is answered in the affirmative i.e. in favour of the assessee and against the revenue.

6. The Reference stands disposed of accordingly. There shall be no order as to costs.

[D.A.MEHTA, J.]

[HARSHA DEVANI, J.]

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